REMARKS

Favorable reconsideration of this application is respectfully requested in view of the following remarks.

Claims 1 and 3-19 are pending in this application. Claims 1, 13, 17 and 18 are independent.

Applicant appreciates Examiner Gilbert's indication that Claims 6-12 recite allowable subject matter, and would be allowable if rewritten in independent form including all of the features of the base claim and any intervening claims. Claims 6-12 have now been placed in independent form and applicant respectfully requests that claims 6-12 be allowed. However, applicant also submits that all pending claims are allowable for the reasons discussed below.

The Office Action rejects claims 1, 3-5 and 13-19 under 35 U.S.C. §103(a) over Evjen, U.S. Patent Application Publication No. 2004/0035079 A1, in view of Thiers et al. ("Thiers"), U.S. Patent Application Publication No. 2006/0032168 A1. The rejection is respectfully traversed.

Independent claim 1 is directed to a flooring system comprising rectangular floorboards which are mechanically lockable, in which the individual floorboards have pairs of opposing connectors along their long sides for locking vertically and horizontally, and the short sides have pairs of opposing connectors which lock the floorboards horizontally wherein, *inter alia*, the system comprises two different types of floorboards. The connectors of one type of the floorboards along one pair of opposite edge portions are arranged in a mirror inverted manner relative to the corresponding connectors along the same pair of opposite edge portions of the other type of floorboards.

Evjen discloses a paneling system for interconnecting panels 10 with opposite connecting sides of substantially tongue in groove joint couplings 18, 20 and opposing adjacent connecting sides that are of substantially hook-joint coupling 14, 16 (see Abstract and Figs. 2-4). Each panel 10 is identical to other panels 10 (see Fig. 4). The Office Action acknowledges that Evjen fails to disclose that the panels 10 are two different types of panels, and that the couplings of one type of panel 10 along one pair of opposite edge portions are arranged in a mirror inverted manner relative to the corresponding couplings along the same pair of opposite edge portions of another type of panel 10. The Office Action asserts that these features are disclosed by Thiers, and that it would have been obvious to one skilled in the art to modify the Evjen's panels 10 in view of Theirs to make the panels of two different types that are mirror images of each other. Applicant respectfully disagrees.

In particular, the Office Action states that "Theirs is not the focus of the rejection, but rather that panels *can* be made in a mirror image fashion for connection" (see page 4 of the Office Action, emphasis added). This statement is inadequate evidence to support the Office Action's conclusion that it would have been obvious to one skilled in the art to modify Evjen's panels 10 to make the panels of two different types that are mirror images of each other. Specifically, the Office Action merely stats that the modification can be possible. According to the Patent Office's Examination Guidelines for Determining Obviousness Under 35 U.S.C. §103(a) in view of *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (2007), the Examiner should clearly articulate why the claimed invention would have been obvious. For example, the Supreme Court in *KSR* held that the Examiner "must [provide] some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" (*KSR* at 1396). The Supreme Court noted that an

invention "composed of several elements is not proved obvious merely be demonstrating that each of its elements was, independently, known in the art" (*Id.*). In other words, simply because something *could have been* modified and a person of ordinary skill was capable of making the modification does not mean it would have been obvious to do so. To establish obviousness, it must be shown that those of ordinary skill in the art would have had some "apparent reason to combined the known elements in the fashion claimed" (*Id.*).

In this case, it is not at all apparent why one skilled in the art would have been led to the stated modification. Applicant submits that there is no reason why one skilled in the art would have modified Evjen's panels 10 in the manner stated by the Office Action. For example, modifying the panels 10 to provide two types of panels, by mirror inverting the connectors of one panel relative to another, would unnecessarily change how the floor panels fit together without providing any additional benefit. In Evjen, all of the panels 10 are the same, as discussed above. The tongue 18 is received in the groove 20, and male element 16 is received in female element 14 to secure the panels 10 together. In this configuration, all of the couplings (i.e. tongue, groove, female element, male element) are located at the same relative position on each of the panels 10. To the extent the panels 10 would have even been physically able to be fit together without the modified couplings interfering with each other, an adjacent panel 10, with mirror inverted connectors, would need to be rotated 180 degrees relative to an existing panel 10. For example, if the tongue 18 and groove 20 were mirror inverted on one panel 10 relative to another panel 10, the modified panel would have to have been rotated 180 degrees so that the tongue 18 would still be received in groove 20. The resulting floor surface would have then been the same pattern as the original floor surface, as the

long sides of the panels would still have been positioned adjacent to one another. Thus, there would have been no reasons why one skilled in the art would have modified Evjen's panels 10 to make the panels of two different types that are mirror images of each other. Therefore, there is inadequate evidence supporting the Office Action's conclusion that it would have been obvious to one skilled in the art to modify Evjen's panels 10 to make the panels of two different types that are mirror images of each other.

Moreover, the stated modification would not have provided options for additional pattern forming with the panels 10 as asserted by the Office Action (see page 4 of the Office Action). On the contrary, the stated modification would have *reduced* the pattern forming options of the panels 10. In particular, the tongue 18 and groove 20 are not compatible with the male 16 and female elements 14. That is, neither the tongue 18 nor the groove 20 can be fitted to either of the male 16 or female 14 elements. Therefore, a "short" side of one of the modified panels 10 would not connect to a "long" side of another modified panel 10 in the manner shown, for example, by Thiers. Accordingly, additional patterns would have been precluded from being formed if Evjen's panels 10 were modified in the manner stated by the Office Action.

For at least the above reasons, the combination of Evjen and Thiers does not disclose, and would not have rendered obvious, the combination of features recited in independent claim 1, including a system comprising two different types of floorboards, the connectors of one type of the floorboards along one pair of opposite edge portions being arranged in a mirror inverted manner relative to the corresponding connectors along the same pair of opposite edge portions of the other type of floorboards, as recited in independent claim 1. Thus, independent claim 1 is

patentable over Evjen and Thiers. Additionally, independent claims 13 and 17 each recite features similar to those discussed above with regard to claim 1. Therefore, these claims are patentable over Evjen and Thiers for at least the reasons discussed above.

Independent claim 18 is directed to a flooring system comprising, rectangular floorboards with long sides which have pairs of opposing connectors which at least allow locking-together both horizontally and vertically by inward angling, and short sides having pairs of opposing connectors which lock the floorboard horizontally. The floorboards are joined in a herringbone pattern, and joining and disconnecting is achievable by an angular motion.

The Office Action acknowledges that Evjen fails to disclose that the panels 10 are joined in a herringbone pattern, but asserts that it would have been obvious to one skilled in the art to have modified the panels 10 to be able to be joined in a herringbone pattern as shown, for example, in Thiers. However, as discussed above, Evjen's tongue 18 and groove 20 (on "long sides") are not compatible with the male 16 and female elements 14 (on "short sides"). Thus, neither the tongue 18 nor the groove 20 can be fitted to either of the male 16 or female 14 elements. Therefore, a "short" side of one of the panels 10 would not connect to a "long" side of another panel 10 to provide for a herringbone pattern, such as shown in Thiers. Thus, independent claim 18 is patentable over Evjen and Thiers for at least these reasons.

Claims 3-5, 14-16 and 19 are patentable over Evjen and Thiers at least by virtue of their dependence from patentable independent claims 1 and 13, respectively. Thus, a detailed discussion of the additional distinguishing features

recited in these dependent claims is not set forth at this time. Withdrawal of the rejections is respectfully requested.

For at least the reasons stated above, the Examiner is respectfully requested to reconsider and withdraw the rejection, and to allow the present application.

Should any questions arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application the undersigned respectfully requests that he be contacted at the number indicated below.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: 17 September 2009 By: 

Travis D. Boone
Registration No. 52635

David R. Kemeny
Registration No. 57241

P.O. Box 1404
Alexandria, VA 22313-1404
703 836 6620